

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.F.A. No. 1379 of 1994

Date of decision: November 29, 2006

Nand Lal and others V. State of Haryana and another

CORAM; HON'BLE MR. JUSTICE VINEY MITTAL

Present: S/Shri Ashwani Talwar, Advocate,
Som Nath Saini, Advocate,
Harsh Manuja, Advocate,
V.M. Gupta, Advocate,
Sanjay Vij, Advocate,
Sachin Mittal, Advocate,
A.K. Bura, Advocate,
Vishal Gupta, Advocate,
Shailender Singh, Advocate,
Rameshwar Malik, Advocate,
Pritam Saini, Advocate,
R.S. Kundu, Advocate,
P.S. Rana, Advocate,
Tahar Singh Achal, Advocate,
Vikrant Sharma, Advocate

for the claimant-landowners.

Shri Hawa Singh Hooda, Advocate General, Haryana with
Shri Ramesh Hooda, Advocate for the State of Haryana.

Viney Mittal, J.

This judgment shall dispose of a batch of first appeals. All the first appeals have arisen out of common acquisition proceedings. Whereas the claimants-landowners have filed the first appeals for enhancement of the market value, the State of Haryana has also filed the appeals for reduction of the assessment, as made by the reference Court. In some of the appeals filed by the State of Haryana, the claimants have also filed cross-objections. The said cross-objections are also being disposed of through the present

judgment.

Vide notification dated February 23, 1989 issued under section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act"), 203 acres of land situated in Patti Insar and Patti Maqdam Jagdan, Tehsil Panipat was notified for acquisition for development and utilisation of land as residential and commercial area for Sectors 13 and 17, Panipat. A declaration under section 6 of the Act was issued on February 22, 1990. The said land was acquired. Two separate awards, Ex.P29 for Sector-17 and Ex.P.30 for Sector-13, were pronounced by the Land Acquisition Collector on February 21, 1992. The acquired land was classified in two categories. Chahi land was assessed to the market value of Rs.2,00,000/- per acre (Rs.41/- per square yard), Gair Mumkin land was assessed to the market value of Rs.1,05,000/- per acre (Rs.31/- per square yard). The Land Acquisition Collector further held that four acres of land situated on G.T. Road and Barsat Road was to be treated as Chahi land.

The claimant-landowners remained dissatisfied with the assessment of the market value made by the Collector. They sought references under section 18 of the Act. The matter was duly referred.

In the reference proceedings, the parties led their oral as well as documentary evidence in support of their respective claims. The reference Court did not choose to rely upon the documentary evidence led by the parties but assessed the market value of the acquired land on the basis of a Division Bench judgment of this Court in R.F.A. No.654 of 1982 (Hukam Chand and others V. Haryana State) decided on October 9, 1987, Ex.P32, (reported as A.I.R. 1989 Punjab and Haryana 27) and also on another judgment Ex.P31. On

the basis of the aforesaid judgments, the market value of the acquired land was uniformly assessed at the rate of Rs.81/- per square yard. The claimant-landowners were also held entitled to statutory benefits.

As noticed above, the claimants have approached this Court for further enhancement, whereas the State of Haryana has claimed reduction of the market value.

I have heard learned counsel for the claimant-landowners and Shri H.S. Hooda, learned Advocate General, Haryana and with their assistance have also gone through the record of the case.

It has been vehemently argued by the learned counsel appearing for the claimant-landowners that the acquired land was situated within the municipal limits of Panipat and was located near various residential colonies and industrial units. Even the main habitation of the city of Panipat is claimed to be near the acquired land. On that basis, learned counsel have argued that the assessment of the market value by the reference Court was wholly on the lower side and the claimant-landowners were entitled to much higher value. Learned counsel have also placed reliance upon a Division Bench judgment of this Court in the case of Jogi Ram and another V. State of Haryana and another 1997(2) P.L.R. 303 to contend that a Division Bench of this court in the aforesaid Jogi Ram's case had taken into consideration the assessment made by the Division Bench in Hukam Chand's case (supra), which has even been relied upon by the learned reference court, and on that basis had assessed the market value of the aforesaid acquired land at the rate of Rs.80/- per square yard. It has been pointed out by the learned counsel that in Jogi Ram's case, notification under section 4

of the Act had been issued on December 15,1982, whereas in the present cases, the aforesaid notification under section 4 of the Act has been issued on February 23,1989. On that basis, learned counsel have contended that in the intervening period of more than 6 years, there was a huge development around the acquired land and in and around the city of Panipat and, therefore, the claimant-landowners were entitled to much higher market value.

On the other hand, Shri Hawa Singh Hooda, learned Advocate General appearing for the State has contended that the market value as assessed by the reference court, was already on the higher side inasmuch as, the State of Haryana has led evidence in the shape of sale instances i.e. Ex.R6 to Ex.R11, which would show that the assessment made by the reference court was on the higher side, and deserves to be reduced. Shri Hooda has also contended that the reliance placed by the reference court as well as the claimants on the cases of Hukam Chand V. State of Haryana (AIR 1989 Punjab & Haryana 27) and Jogi Ram and others V. State of Haryana (1997(2) P.L.R. 303) was also without any justification, inasmuch as, the land in the aforesaid two cases was situated on the other side of the city of Panipat i.e. between Panipat and Delhi, whereas in the present cases the land was situated towards the side of Karnal. Consequently, learned Advocate General has maintained that there was a considerable distance between the present acquired land and the acquired land in Jogi Ram's case and,as such, the assessment in the aforesaid Jogi Ram's case could not be treated as any yard stick for making the assessment of the market value in the present cases.

I have duly considered the rival contentions of the learned counsel for the parties. I have also perused the various

findings recorded by the learned reference court.

Some observations made by the reference court with regard to the location and potentiality of the acquired land may be noticed as follows :

“.....The claimants have led oral as well as documentary evidence in this regard. So much so, the claimants have specifically pleaded in the reference petitions that the disputed land is near the G.T.Road, Bus Stand, Panipat, Civil Hospital, Panipat etc. but the respondents have not specifically denied this fact in the routine written statements. As indicated earlier, petitioner Siri Ram Kapoor PW5 and Gurdeep Singh PW7 have maintained that the disputed land was an urban property and was surrounded by many residential colonies. PW5 has also stated that it was at a distance of 200 yards from main G.T.Road, Arya Nagar Colony, Jyoti Residential Colony and Bhartiya Swantrata Mill. Even the situation and location of the land near the G.T.Road, has also been shown in the site plan Ex.RW5/A. It is clear from Aks-shajras Ex.P1 and Ex.P2 and the site plan Ex.P3 that the disputed land is situated within the vicinity of Panipat and was surrounded by many factories, residential colonies and commercial establishments. It is situated between G.T.Road and Barsat Road. The respondents have not led any cogent evidence to rebut the oral as well as documentary evidence, produced by the claimants in this direction. The very fact that the disputed land had been acquired for development and utilization as residential,

commercial and industrial area in the Urban Estate of Panipat itself proves that the acquired land had the potential value for being used for residential, commercial and industrial purposes.....”

It has further been observed by the reference court as follows :

“19. The bare perusal of the evidence on record, mentioned above, would go to show that the disputed land is situated in Patti Insar and Patti Maqдум of Panipat Town. It is situated between G.T.Road and Barsat Road and near the Bus Stand, Panipat and Civil Hospital, Panipat. In other words, the disputed acquired land is situated very near and within the vicinity of Panipat Town. There is always a rising trend of development near and about the developing cities. Such development is an unending phenomenon and the Court can take judicial notice of such developments. Even, no one can lose sight of the fact that the land within the vicinity of Panipat town is under great-pressure of building activities.

20. Thus, it would be seen that the claimants have led cogent oral as well as documentary evidence regarding the potentiality of the land. If the entire oral as well as documentary evidence and totality of other facts and circumstances of the case, referred to above, are perused in relation to location and situation of the land and the purpose of its acquisition are put together, then in my considered opinion, the conclusion is

inescapable that it stands proved on record that the disputed acquired land had undoubtedly, the immense potential value at the time of its acquisition, for being developed as residential, commercial and industrial purposes. It is well settled that where the land is acquired under the Act, within the vicinity of a particular town, it ought to be evaluated as urban property, even if the property at the time of acquisition is used as agricultural property. It is totally wrong to classify the land on the basis of agricultural quality, as has been done by the Land Acquisition Collector in the present cases.....”

The learned reference Court has also taken note of the sale instances Ex. R.6 to Ex. R.11 relied upon by the State of Haryana. All the aforesaid sale instances reflect a price between Rs. 31.48 per square yard to Rs. 36.15 per square yard. It is apparent that even the Land Acquisition Collector had assessed the Chahi land at the rate of Rs. 41/- per square yard. Thus, the sale instances relied upon by the State of Haryana were not even taken into consideration by the Land Acquisition Collector and, as such, cannot be treated to be relevant in any manner, since they reflect a price which is lower than as assessed by the Land Acquisition Collector.

As noticed above, the reference Court has chosen to assess the market value of the acquired land on the basis of the judgment of a Division Bench of this in Hukam Chand's case (supra). In Hukam Chand's case, notification under section 4 of the Act was issued in the year 1977. The said judgment was taken into consideration in a latter Division Bench judgment of this court in Jogi Ram's case (supra), when some land had been acquired for

Sectors 11,12 and 25, Phase II in Urban Estate, Panipat. In Jogi Ram's case Section 4 notification was issued on December 15,1982. Keeping in view the assessment in Hukam Chand's case and by granting the requisite enhancement, the acquired land in Jogi Ram's case was assessed at the rate of Rs.80/- per square yard. Although it is even conceded by the learned counsel for the claimant-landowners that the aforesaid acquired land in Jogi Ram's case was situated on the other side of the city of Panipat (Delhi side) and as such there is some distance between the present acquired land (which is situated on the Karnal side) and the aforesaid land in Jogi Ram's case but it is also not in dispute, as is also apparent from the evidence on the record, that the acquired land in Jogi Ram's case was situated at an equal distance from the city of Panipat (though on the other side) which is a similar distance where the present acquired land is situated from the city of Panipat (though on Karnal side).Thus, the distance between the city of Panipat and the acquired land In Jogi Ram's case and the present cases is almost similar. The advantages which were available to the acquired land in Jogi Ram's case are better available to the present acquired land in the year 1989.

At this stage, it may be relevant to notice some observations made by the Apex Court in the case of Thakarsibhai Devjibhai and others V. Executive Engineer, Gujarat and another (2001)9 SCC 584 as follows :

“12. As we have said above, the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons. One, that the present acquisition

is of larger area and second, the distance between the land under acquisition and in Ext.16 is about 5 km. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each landowner, it could not be said that the acquisition is of a large area. Largeness is merely when each landholder's land is clubbed together then the area becomes large. Each landowner's holdings are of small area. Even otherwise, visioning in line with the submission for the State, we find Ext. 16 is about two hectares of land which cannot be said to be of a small piece of land. So far as the other question of distance between the two classes of lands is concerned, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ext. 16 and the present land, even if they are 5 kms apart, would not be relevant, the relevancy could be, their distances from Viramgam town. We find, as per the map produced by the State, the present acquired land is about 3 km away from it, while the land under Ext.16 is about 2 km away from it. This difference is not such as to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Ext. 16 and the present one are similar. No evidence has been led on behalf of the State to find any difference between the two. In view of

this, the inference drawn by the High Court for reducing the compensation by Rs.10/- per sq. m cannot be sustained.”(emphasis supplied)

In these circumstances, keeping in view the potentiality and location of the acquired land, as found by the reference court (as extracted above), I deem it appropriate that the assessment of the acquired land in the present cases be made on the basis of the assessment made in Jogi Ram's case. As noticed above, in Jogi Ram's case the notification under section 4 of the Act was issued on December 15,1982. Notification under section 4 of the Act in the present acquisition has been issued on February 23,1989. A period of more than six years had elapsed between the two notifications. In Jogi Ram's case, the market value of the acquired land was assessed at the rate of Rs.80/- per square yard. Taking into consideration the time gap between the two notifications, and also keeping in view the fact that normally speaking an increase of 12% per year is considered as reasonable enhancement, I deem it appropriate to fix the market value of the acquired land at the rate of Rs.125/- per square yard.

As a result of the aforesaid discussion, the appeals filed by the claimant-landowners (also the cross-objections filed by some of the claimants) are allowed to the extent that claimant-landowners would be entitled to the market value of Rs.125/- per square yard for their acquired land. The claimants would also be entitled to all other statutory benefits which are admissible to them in accordance with law. In this view of the matter, the appeals filed by the State of Haryana are dismissed.

